BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BRIAN D. GROOM	)	
Claimant	)	
	)	
VS.	)	
	)	
THE BOEING COMPANY	)	
Respondent	)	Docket No. 1,023,310
	)	
AND	)	
	)	
INDEMNITY INS. CO. OF NORTH AMERICA	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the September 2, 2010 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes (ALJ).

ISSUES

After a thorough review of the record, the ALJ concluded "[t]here is no competent medical evidence that claimant's cervical and lumbar complaints are causally related to his work with respondent."[1] Accordingly, she denied claimant's request for medical treatment and for payment of medical bills and other "damages" claimant itemized and sought to be reimbursed.

The claimant requests review of this decision and has filed a lengthy brief in support of his position. Distilled to its essence, claimant contends that he was injured while in respondent's employ but that the complaints to his entire spine have largely gone untreated and/or undiagnosed since 2005. He maintains that he is entitled to reimbursement for medical bills and co-pays he incurred for the treatment (and ultimately surgery) to his neck

[1] ALJ Award (Sept. 2, 2010) at 4.

as well as a whole host of expenses (or as he terms them "damages") which he alleges should be recoverable in this claim.[2]

Respondent has not filed a brief, but would presumably argue that the ALJ should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

This claim stems from an alleged series of microtraumas that culminated in an injury in May of 2005. The claim has lingered for some time with no action and when claimant recently filed for a preliminary hearing seeking additional benefits, the ALJ appropriately reviewed the entire file. The ALJ succinctly and accurately set forth the facts and circumstances surrounding the claim as well as the procedural history associated with claimant's previous requests for preliminary hearing requests. This Board Member has reviewed that summary and adopts it as her own. Thus, only those facts pertinent to the decision will be referenced.

Claimant alleges that a number of injuries occurred while working for respondent. He goes on to allege that not all those injuries have been properly diagnosed and treated. He acknowledges that his carpal tunnel complaints have been treated but his "repeated aches and pains" to his neck went untreated and repeatedly denied. When asked if he had any medical report which substantiated his present need for treatment for complaints to his spine and its connection to his work-related injury, claimant responded "no".[3] And after her review of the file, coupled with claimant's testimony, the ALJ concluded that claimant had failed to sustain his evidentiary burden of establishing his "cervical and lumbar complaints are causally related to his work with respondent".[4]

Claimant appealed this determination and has advanced a number of arguments, most of which were not presented at the preliminary hearing. Claimant alleges that he was repeatedly and systematically "denied treatment by the respondents and the ALJ" and as a result "he was forced to seek his own remedy."[5] Claimant seems to assert that these

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[2] These damages include phone bills, personal loans, credit card bills, purchase price for a home, land, real estate taxes and an estimate on the cost to finish a house.

[3] P.H. Trans. (Jul. 29, 2010) at 18.

[4] ALJ Order (Sept. 2, 2010) at 4.

[5] Claimant's Brief at 2 (filed Sept. 22, 2010).

denials constituted fraud and abuse[6] and required claimant to incur expenses which he believes are properly recoverable as "damages" in this proceeding. He also expressly alleges at one point that respondents are engaging in "organized crime" in denying him the treatment he seeks.[7]

He also contends the medical reports contained within the record are nothing more than "opinions" and do not constitute "material fact"[8] as it relates to his need for further treatment. As noted by the ALJ, three physicians have each examined claimant and found him to be at maximum medical improvement and his permanency has been rated. Claimant takes issue with this finding and the associated terminology. He asserts that the term "maximum medical improvement" (MMI) "has absolutely no medical analysis of material fact."[9] He contends that each of these physicians who opined that he was at MMI were not treating physicians, only examiners. And because they never found what was wrong with his spine their opinions were not complete. Again, he asserts this is part and parcel of the conspiracy of fraud. Claimant's brief goes on to take issue with respondent's decision to have him videotaped during surveillance, alleging this is another part of the respondent's fraud.

Taken as a whole, it is claimant's belief that because his spine complaints have yet to be acknowledged, diagnosed, treated and compensation provided, that respondent as well as the physicians and now the ALJ are all wrongfully denying him his due. And that as a result of this, he has not only gone without treatment (although his brief indicates he *has* had surgery and incurred bills as a result of that surgery) and sustained a myriad of "damages".

This Board Member has carefully reviewed the file and concludes the ALJ's decision must be affirmed. As wronged as claimant believes he has been, based upon the evidence as presently developed, the only condition for which he has established a compensable claim is the bilateral carpal tunnel complaints, for which he received treatment and has been declared to be at MMI.[10] Dr. Do saw claimant and concluded that the balance of his complaints (including chest pain, intermittent left sided rib pain, neck pain, left thigh and knee pain and right knee pain) were causally unrelated to his work activities.

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[6] K.S.A. 44-5,120.

[7] Claimant's Brief at 8 (filed Sept. 22, 2010).

[8] *Id.* at 3.

[9] *Id.*

[10] Claimant met with Dr. Munhall at the request of his attorney (at the time) on October 19, 2006 and was found to be at MMI. Dr. Melhorn was claimant's treating physician and he performed bilateral carpal tunnel releases and later found claimant to be at MMI on October 17, 2006.

Claimant admitted to the ALJ that he had no medical record or report which would suggest that his current need for treatment is attributable to his work-related injury. Indeed, there is no recent medical information contained within this record, except for claimant's own self-prepared medical examination report, which would support his need for medical treatment. It does not appear that claimant has any sort of medical training, and although medical opinions are not absolutely necessary to establish the existence of an injury under the workers compensation act[11], under these facts and circumstances, this Board Member is not persuaded by claimant's self-serving litany of physical complaints.

For these reasons, the ALJ's preliminary hearing Order is therefore affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.[12] Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Nelsonna Potts Barnes dated September 2, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October 2010.

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JULIE A.N. SAMPLE
BOARD MEMBER

c: Brian D. Groom, Pro Se Claimant
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge

[11] *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 201, 547 P.2d. 751 (1976).

[12] K.S.A. 44-534a.